

**Letter of Findings Number: 40-20120453P
Utility Receipts Tax
For Tax Year 2004**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is business with operations in Indiana and other states. The Indiana Department of Revenue ("Department") determined that a ten percent negligence penalty was due for underpayment of utilities receipts tax ("URT") for the tax year 2004. Taxpayer filed a protest and provided supplemental documentation supporting that protest. An administrative hearing was held and this Letter of Findings results. Further facts will be presented as required.

I. Tax Administration–Negligence Penalty.

DISCUSSION

The Department issued proposed assessments for a ten percent negligence penalty for 2004. Taxpayer protests the imposition of penalty and requests a waiver of the penalty. Taxpayer states that it merged with another company during that year and that, when both parties' remittances are taken into account, the total of URT remitted for 2004 is accurate. Taxpayer provided documentation and analysis in support of its position. Taxpayer believes that these factors establish grounds for waiver of the ten percent penalty.

The Department refers to IC § 6-8.1-10-2.1, which states in relevant part:

If a person:

...

(2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;

...

the person is subject to a penalty.

...

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

....

(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Finally, [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, the Department determined that Taxpayer had under-remitted URT for 2004 due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to penalty under IC § 6-8.1-10-2.1(a)(4). As a result of the protest process, Taxpayer has provided supporting documentation in the protest process. After a review of that documentation, Taxpayer has affirmatively established that it remitted the proper amount of URT for 2004, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest is sustained.

Posted: 05/29/2013 by Legislative Services Agency
An [html](#) version of this document.